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The Honorable Glen E. Clark
Chief Bankruptcy Judge
United States Bankruptcy Court
350 South Main Street
Salt Lake City, UT 84101

Re: Chapter 13 Attorney Fees in Chapter 13 Cases

Dear Judge Clark:

Thank you for the opportunity to submit statements on the proposal for Attorney's Fees in Chapter 13 Cases. The memorandum attached to Mr. Davis' letter ("the Memorandum") references information that I provided regarding adjustments in fee structures in other jurisdictions. I would like to point out that I have no first-hand knowledge of these adjustments. As explained to Mr. Davis, the information is based on responses by various Chapter 13 Trustees to questions posed on the Chapter 13 Trustee's e-mail list serve. This is not necessarily a complete treatment of all districts. The amounts stated have not been confirmed by reference to local rules or standing orders.

With respect to the proposal for increasing the presumptively reasonable fee, I agree that such fee should be increased. I believe that the submissions to the Court on this matter fully justify an upward adjustment of the presumptively reasonable fee award.

I also strongly agree that, for the reasons set forth in Memorandum, the distinction between fee awards in uncontested cases and contested cases should be eliminated. I understand that the distinction was created to persuade counsel to prepare the cases for the confirmation hearings in a timely manner in order to avoid the negative impact of waiting until the final days to adequately address issues raised in the confirmation process. I believe, however, that the negative impact of this distinction, as set forth in Section III of the Memorandum outweighs the benefit gained by this distinction. In addition, any problems created by the delay of counsel in preparing a matter for confirmation could be addressed by other means. In this regard, any adopted fee guidelines should clearly provide that the court retains discretion to reduce fees below the presumptively reasonable amount if the court finds that the conduct of counsel in preparing the case for confirmation created undue delay or undue impact on the court or parties in interest.

The difficult question is determining the amount by which the presumptively reasonable fee should be increased. The best information regarding the appropriate amount of the fee increase is in the hands of debtors' counsel, not the Trustees. There has been an increase in time spent by my office in administering cases under BAPCPA. Given the short period of time in which we have been administering such cases, however, I can not accurately quantify the amount of the increase nor the monetary cost of the increase. I would note, however, that the additional time spent in administering BAPCPA cases is more than likely greater at this point in time than it will be in the future once we have passed the learning curve and once disputed issues begin to be resolved by the court. I understand also that the debtors' attorneys are more likely to be able to quantify the increase in time and cost caused by BAPCPA in that they have been keeping track of their time on a case by case basis.

I have reviewed the Memorandum and the information attached thereto. I have also reviewed this written submissions of Mr. Larsen, Mr. Cook, Mr. Morris, Mr. Trease, Mr. Dew, Ms. Drake, Mr. Eder and Ms. Neeleman.. I believe that these materials support a determination that the proposed amount of \$2,750 reflects a presumptively reasonable fee for all work performed through confirmation, the claims review process, the financial education certification and the final certification of readiness for discharge.

I do not, however, believe that the addition of \$1,000 to the presumptively reasonable fee for business cases has been adequately supported by the submissions to the court. A business case has been defined as one in which more than 20% of the debtor's gross income is derived from self-employment or similar business activity. This definition could include a wide variety of cases. The cases could range from a debtor receiving money from babysitting in his or her home to a debtor operating a larger business with employees and various tax collection and withholding obligations. Some of these cases may require significant work beyond that which is necessary in a typical Chapter 13 case. However, some of these cases may involve virtually no extra work at all. I believe that it would be an overgeneralization to state that \$1,000 extra in attorney fees would be reasonable in all such cases. In addition, I did not see in the submissions to the court any time records or evidence that reflected the extra work that is involved in a typical business case. I recognize that extra work is likely to be required in many such cases and counsel should be compensated for their efforts. It is more appropriate, however, to address the extra compensation through fee applications in the individual cases in light of the circumstances of such case than to approve a \$1,000 additional fee for all business cases.

I also do not believe that there is evidence before the court supporting the additional \$1,000 to \$1,500 for a motion to impose or extend the stay. In reviewing the itemizations submitted, I found two itemizations that included time spent on motions to extend or impose the automatic stay. The itemization in In re Ballantyne, Case No. 05-80137, submitted by Mr. Davis, reflects a total of \$1,250 in time entries that included work related to the motion to extend the stay. The itemization of Mr. Berry in In re Tomasini, Case No. 05-00115 reflects a total of \$3,153 in time entries that included work

related to the motion to extend the automatic stay. Both of the time records reflect attendance at a hearing on the motion. These time records reflect a wide variation in the time spent on such motions. The motions and the time spent in preparing such motions may vary significantly from case to case and may not be readily amenable to a presumptively reasonable amount. It may be more appropriate in these circumstances to consider fees on a case by case basis through fee applications.

Based on the above, I would support the increase in the presumptively reasonable fee to \$2,750 for Chapter 13 cases. I would also support the elimination of a distinction between fee awards in contested cases and fee awards in uncontested cases. I do not support additional amounts in presumptively reasonable fees for business cases or motions to extend the stay based on the materials presented to the court.

I believe that the presumptive fee award should include fees for all work performed through confirmation plus the claims review process, the financial education certification and the final certification of readiness for discharge. Counsel may submit a noticed and itemized fee application for any additional work performed post-confirmation. In addition, in lieu of relying upon the presumptive fee, counsel may submit an itemized fee application for their fees in any case if counsel believes that the presumptive fee award does not provide adequate compensation. Finally, the court should retain the discretion to reduce the fees below the presumptively reasonable amount if the conduct of the attorney created undue delay or had an undue impact on the court or parties in interest.

There have been suggestions that the court further address issues pertaining to post-confirmation fees and consider an "ala carte menu" with respect to fees for certain services. I would not suggest that the court do so at this time. I believe that we need a simple solution to address the immediate problem of the inadequacy of the present fee structure. I believe that the increase in the presumptive fee award to \$2,750 does so. There is still much to learn about practicing under BAPCPA and the consideration of a more detailed long term solution to the attorney fee issues raised by BAPCPA is premature.

In closing, I fully support the proposition that competent Chapter 13 counsel should be well compensated for their efforts. Such counsel assumes a vital role in ensuring the smooth and effective operation of a Chapter 13 system. Reasonable compensation is necessary to attract and retain competent counsel to this area of practice.

Respectfully Submitted:

/s/

J. Vincent Cameron
Chapter 13 Trustee